

**FILED**

**JUL 27 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FLORENCIO GONZALEZ-MENDEZ,

Defendant - Appellant.

No. 05-50229

D.C. No. CR-04-02312-IEG

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Southern District of California  
Irma E. Gonzalez, District Judge, Presiding

Submitted July 24, 2006<sup>\*\*</sup>

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Florencio Gonzalez-Mendez appeals from the sentence imposed following his guilty plea to being a deported alien found in the United States, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Gonzalez-Mendez contends that the district court erred by increasing his sentence pursuant to 8 U.S.C. § 1326(b)(2) based on judge-found facts, when he did not admit and a jury did not find beyond a reasonable doubt the date of his prior deportation or his convictions. He further asserts that the constitutional doubt doctrine requires that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), be limited to the holding that a prior conviction need not be alleged in the indictment when admitted in a guilty plea, but that *Apprendi v. New Jersey*, 530 U.S. 466 (2000), still requires facts to be submitted to a jury and proven beyond a reasonable doubt. He also contends that in light of subsequent Supreme Court decisions, *Almendarez-Torres* has been overruled and that § 1326(b) is unconstitutional.

These contentions are foreclosed. *See United States v. Velasquez-Reyes*, 427 F.3d 1227, 1229 (9th Cir. 2005) (rejecting the contention that the government is required to plead prior convictions in the indictment and prove them beyond a reasonable doubt to a jury unless defendant admits the prior conviction in his guilty plea); *United States v. Weiland*, 420 F.3d 1062, 1079 n.16 (9th Cir. 2005) (noting that we continue to be bound by the Supreme Court's holding in *Almendarez-Torres*); *United States v. Castillo-Rivera*, 244 F.3d 1020, 1024-25 (9th Cir. 2001) (rejecting the contention that the fact of the temporal relationship

between the deportation and the prior conviction under 8 U.S.C. § 1326(b)(2) is beyond the scope of the Supreme Court's recidivism exception).

Gonzalez-Mendez's claim that the court imposed his sentence in violation of the Sixth Amendment and *United States v. Booker*, 543 U.S. 220 (2005), is unpersuasive, as the Guidelines were merely advisory when the sentence was imposed. *See United States v. Moreno-Hernandez*, 419 F.3d 906, 914 n.8 (9th Cir. 2005) (stating that a sentencing enhancement based on the fact of a prior conviction "does not raise any Sixth Amendment problems" under *Booker*).

**AFFIRMED.**